

EXHIBIT A

LOAN AND SECURITY AGREEMENT

between

EASY STREET PARTNERS, LLC
4780 Winchester Court
Park City, Utah 84060
(Borrower)

and

WESTLB AG,
New York Branch
1211 Avenue of the Americas
New York, New York 10036
(Administrative Agent and Lender)

Dated as of March 30, 2006

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LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (as amended, modified or supplemented from time to time, collectively, this *Agreement*) is made and entered into as of March 30, 2006, by and between WESTLB AG, a German banking corporation acting through its New York branch, having an office at 1211 Avenue of the Americas, New York, New York 10036, as agent (including any of its successors and assigns in such capacity, the *Administrative Agent*) for itself, and such other co-lenders as may exist from time to time (collectively, the *Lenders* and each individually, a *Lender*), and EASY STREET PARTNERS, LLC, a Utah limited liability company (the *Borrower*), having an address at 4780 Winchester Court, Park City, Utah 84098.

WHEREAS, the Borrower is the fee owner of certain parcels of land in the County of Summit in the State of Utah more particularly described on Exhibit A;

WHEREAS, the Borrower desires to renovate and re-position the Existing Improvements, and construct the Additional Improvements to create a luxury, full-service resort comprised of approximately 22 luxury hotel condominium units (to be sold as Fractional Ownership Units), certain commercial units and related amenities, including two restaurants, a spa and fitness center, meeting or conference space and an underground climate-controlled parking garage;

WHEREAS, the Borrower desires to borrow from the Lenders a loan in a maximum principal amount equal to the Loan Amount (as hereinafter defined), the proceeds of which the Borrower will use to fund Total Project Costs (as hereinafter defined); and

WHEREAS, upon the terms and subject to the conditions hereinafter set forth, the Lenders are willing to make the Loan (as hereinafter defined) to the Borrower.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant, agree, represent and warrant as follows:

ARTICLE I

TERMS AND DEFINITIONS

Section 1.1 Definitions

As used in this Agreement, the following terms have the meanings specified below:

Accounting Rules means GAAP, and where applicable, USAL, in each case, consistently applied.

Account Collateral has the meaning given to such term in Section 4.12.

Accounts has the meaning given to such term in Section 4.1(a).

Acquisition Costs means the purchase price for the Land and Existing Improvements together with any adjustments thereto (in each case, to the extent previously Approved by the Administrative Agent) shown on the acquisition settlement statement delivered to and Approved by the Administrative Agent to reflect any credits received by the Borrower and any prorations and recording and transfer taxes incurred plus standard and commercially reasonable third-party closing costs and expenses (including the cost of a title insurance premium, survey and attorneys' fees and disbursements).

ADA means the federal Americans With Disabilities Act of 1990, Pub. L. No. 89-670, 104 Stat. 327 (1990), as such law may be amended from time to time, and the regulations promulgated and rulings issued thereunder.

Additional Improvements means, collectively, construction of a six story building containing (a) 22 luxury hotel condominium units, (b) two (2) restaurants, (c) a spa and fitness center, (d) meeting and conference space, (e) a rooftop owners club with heated outdoor spa grotto area, (f) outdoor plaza areas, (g) a climate-controlled underground parking garage and (h) other full-service, four-star equivalent resort destination amenities, in each case, to be constructed in accordance with the Plans and Specifications.

Administrative Agent has the meaning set forth in the preamble to this Agreement.

Advance or Advances means any disbursement of the proceeds of the Loan by Lenders pursuant to the terms of this Agreement.

Affiliate means, as to any Person, any other Person:

- (a) that directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such Person; or
- (b) that, directly or indirectly, beneficially owns or holds ten percent (10%) or more of any class of stock or any other ownership interest in such Person; or
- (c) ten percent (10%) or more of the direct or indirect ownership of which is beneficially owned or held by such Person; or
- (d) that is a member of the family (as defined in Section 267(c)(4) of the IRC) of such Person or which is a trust or estate, the beneficial owners of which are members of the family (as defined in Section 267(c)(4) of the IRC) of such Person; or
- (e) that directly or indirectly is a partner, shareholder, member, officer, director or employee of such Person.

Agreement has the meaning set forth in the preamble to this Agreement.

Amortization Amount means with respect to the Loan, a monthly amount equal to the principal payment that would be sufficient to fully amortize the entire Outstanding Principal balance of the Loan in accordance with a twenty (20) year, mortgage-style amortization schedule, with an interest rate equal to the Amortization Rate.

Amortization Rate means the Treasury Rate plus three hundred basis points (3.00%).

Applicable Lending Office means with respect to any Lender, the office of such Lender opposite its name on the signature page of this Agreement or in the Assignment and Acceptance Agreement pursuant to which it became a Lender, or such other office of such Lender as such Lender may from time to time specify to the Borrower and the Administrative Agent.

Applicable Margin means: (a) with respect to any Base Rate Loan during the Construction Loan Term, 150 basis points (1.50%); (b) with respect to any Base Rate Loan during the term of the Interim Loan, 125 basis points (1.25%); or (c) with respect to any LIBOR Loan, 250 basis points (2.50%).

Appraisal means a written appraisal report of the Property as the term "appraisal" is defined in the Code of Professional Ethics of the American Institute of Appraisers, meeting the requirements of the Federal Institutions Reform, Recovery and Enforcement Act of 1989, prepared by a professional appraiser retained by the Administrative Agent at the Borrower's expense, who is a member of the Appraisal Institute (MAI), addressed to the Administrative Agent and in form, scope and substance satisfactory to the Administrative Agent, setting forth such appraiser's determination of the Appraised Value.

Appraised Value means the fair market value of the Property, which would be obtained in an arms'-length transaction between an informed and willing buyer and an informed and willing seller, under no compulsion to buy or sell, respectively, on the appraisal date of the Appraisal.

Approval or Approved means, as the context so determines, an approval in writing given to the party seeking approval after full disclosure to the party giving Approval of all material facts reasonably necessary in order to determine whether approval should be granted.

Approved Accountant means any of the top tier accounting firms or other independent, third-party certified public accountant of comparable standing Approved by the Administrative Agent.

Architect means the architect retained by the Borrower with respect to the Additional Improvements, and Approved by the Administrative Agent.

Architect's Certificate means a certificate of the Architect in the form of Exhibit D.

Architect's Contract means the contract for architectural services between the Borrower and the Architect relating to the Project in form and substance Approved by the Administrative Agent

As-Built Survey has the meaning given to such term in Section 3.3(d).

Assignment and Acceptance means an assignment and acceptance entered into by a Lender and an Eligible Assignee and accepted by the Administrative Agent in accordance with Section 11.5(b) in the form set forth on Exhibit B.

Bankruptcy Code means 11 U.S.C §101 et seq., as the same may be amended from time to time.

Bankruptcy Event means, with respect to any Person, the occurrence of any of the following: (a) the entry of a decree or order for relief by a Governmental Authority in an involuntary case under any applicable bankruptcy, insolvency or other similar Law now or hereafter in effect, or the appointment by a Governmental Authority of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of such Person or for any substantial part of its property or the ordering of the winding up or liquidation of its affairs by a Governmental Authority; or (b) the commencement against such Person of an involuntary case under any applicable bankruptcy, insolvency or other similar Law now or hereafter in effect, or of any case, proceeding or other action for the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of such Person or for any substantial part of its property or for the winding up or liquidation of its affairs, and such involuntary case or other case, proceeding or other action shall not have been dismissed within sixty (60) days, or the repossession or seizure by a creditor of such Person of a substantial part of its property; or (c) the commencement by such Person of a voluntary case under any applicable bankruptcy, insolvency or other similar Law now or hereafter in effect, or consent to the entry of an order for relief in an involuntary case under any such Law, or consent to the appointment of or the taking possession by a receiver, liquidator, assignee, creditor in possession, custodian, trustee, sequestrator (or similar official) of such Person or for any substantial part of its property or make any general assignment for the benefit of creditors; or (d) such Person shall be unable to, or shall admit in writing its inability to, pay its debts generally as they become due.

Base Rate means the greater of:

(a) a fluctuating interest rate, for any period, equal for each day during such period to the weighted average of the rates on overnight Federal Funds transactions with members of the Federal Reserve System arranged by Federal Funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average of the quotations for such day for such transactions received by the Administrative Agent from three (3) Federal Funds brokers of recognized standing selected by the Administrative Agent, plus three-quarters of one percent (0.75%); and

(b) a fluctuating interest rate per annum announced publicly by the Administrative Agent in New York, New York, from time to time, as its "Prime Rate". The Prime Rate is not intended to be the lowest rate of interest charged by the Administrative Agent in connection with extensions of credit to debtors.

Bona Fide Sales Contract means a bona fide, unconditional (except for customary title and financing conditions, rights of rescission required by Law, and other matters contained in the Bona Fide Sales Contract form previously Approved by the Administrative Agent) contract in the form included in the offering plan for the sale of a Fractional Ownership Unit (or a fractional interest therein) to a Person.

Borrower has the meaning set forth in the preamble to this Agreement.

Borrower's Equity Investment means an amount not less than \$12,750,000.00, a portion of which may consist of the payment of Acquisition Costs by the Borrower, subject to the loan balancing requirement set forth herein.

Borrower's Member means Easy Street Mezzanine LLC, a Delaware limited liability company.

Borrower's Requisition has the meaning given to such term in Section 2.2(b).

Business Day means (a) a day other than (i) Saturday, (ii) Sunday, or (iii) a day on which commercial banks in New York, Utah, or Germany are authorized or required by law to close or, (b) only with respect to the determination of or notices related to LIBO Rates, a day on which dollar deposits are carried out in the Loan interbank market and commercial banks are open for business in London, England.

Business Plan has the meaning given to such term in Section 6.3(b).

Capitalized Leases means, with respect to any Person, any leases of any property by such Person, as lessee, which, in accordance with Accounting Rules, is required to be accounted for as a capital lease on the balance sheet of such Person.

Cash means coin or currency of the United States of America or immediately available federal funds.

Cash Equivalents means (a) Cash and (b) U.S. Obligations.

Casualty Retainage has the meaning given to such term in Section 12.2(a)(iv).

Certificate of Occupancy means a certificate or permit issued by the County of Summit (or other applicable Governmental Authority), pursuant to which the improvements that are the subject of such certificate have been approved for occupancy and issued by the applicable Governmental Authority.

Certification has the meaning given to such term in Section 4.4(a)(v).

Change of Control means any event (including, without limitation, the sale, transfer or issuance, in one or more transactions, of any direct or indirect beneficial ownership interest in or right to distributions from the Borrower) following which the Borrower ceases to be Controlled by David Wickline and William Shoaf.

Change Order has the meaning given to such term in Section 6.2(j).

Claim has the meaning given to such term in Section 11.8(a).

Closing Date means March [____], 2006.

Club Facilities License Agreement has the meaning given to such term in the Condominium Declaration.

CO Date has the meaning given to such term in the definition of Substantial Completion.

Collateral means all property that is or is intended to be subject to any Lien in favor of the Administrative Agent for the benefit of the Lenders.

Collateral Assignment of Interest Rate Protection Agreement means that certain Collateral Assignment of Interest Rate Protection Agreement, in the form of Exhibit E, to be entered into between the Borrower and the Administrative Agent pursuant to Section 6.1(u).

Commercial Units has the meaning given to such term in the Condominium Declaration.

Completion Date means June 30, 2008.

Condemnation Proceeds has the meaning given to such term in the definition of Net Proceeds.

Condominium means the condominium known as "Union Square" to be established with respect to the Property pursuant to the Condominium Declaration in accordance with the terms of this Agreement, the Condominium Act and other applicable Law.

Condominium Act means the Utah Condominium Ownership Act, Title 57, Chapter 8, Utah Code.

Condominium Association means the Union Square Owners Association, Inc., the association formed pursuant to the Condominium Documents.

Condominium Authority means the Utah Division of Real Estate in the State of Utah.

Condominium Declaration means the Declaration of Condominium for Union Square made by the Borrower with respect to the Property pursuant to the Condominium Act.

Condominium Documents means all documents (and all amendments and supplements thereto), as required by the Condominium Act and otherwise relating to the submission of the Property to the provisions of the Condominium Act or to the regulations, operation, administration or sale thereof after such submission, including the Park City Development Agreement, the Condominium Declaration, articles of incorporation, by-laws and rules and regulations of the Condominium Association, the Club Facilities License Agreement, the Parking License Agreement, the Subdivision Plat, the Condominium Plat and any reciprocal easement agreements to be used in connection with the establishment of the Condominium.

Condominium Plat means the condominium plat required by the Condominium Act to be recorded in the official records of Summit County, Utah in order to establish separate condominium units with respect to the Property.

Consent and Subordination Agreement means, with respect to the Loan, each of (a) that certain Consent and Subordination of Management Agreement, dated as of the Closing Date, by and among the Borrower, the Administrative Agent and the Hotel Operator and (b) that certain Consent and Subordination of Development Agreement, dated as of the Closing Date, by and among the Borrower, the Administrative Agent and the Developer.

Consents to Assignments means those certain consents required pursuant to the Pledge and Security Agreement.

Construction Advance means any Advance other than the Initial Advance.

Construction Contracts means those contracts material to the construction of the Additional Improvements, including, without limitation, the Architect's Contract and the General Contractor's Agreement.

Construction Consultant means Merritt & Harris or, at the Administrative Agent's option upon notice to the Borrower, any other consulting architect, engineer or other consultant appointed by the Administrative Agent.

Construction Contingency means the amount allocated as contingency reserve in the Project Budget, which amount shall not be less than 10% of the total amount for the line items "Hard Costs", "FF&E" and "Infrastructure Costs" set forth in the Approved Project Budget.

Construction Contingency Escrow has the meaning given to such term in Section 2.17.

Construction Costs means any Project Costs other than Acquisition Costs, interest and fees and expenses payable to the Administrative Agent or any Lender under the terms of the Loan Documents.

Construction Loan Term has the meaning given to such term in the definition of Maturity Date.

Construction Manager means Millcreek Consulting & Development, Inc., a Utah corporation, or any other Person Approved by the Administrative Agent to provide construction management services with respect to the Project.

Construction Manager's Agreement means the agreement for construction management services between the Borrower and the Construction Manager relating to the Project and in form and substance Approved by the Administrative Agent.

Construction Schedule means the schedule, broken down by trade, of the estimated dates of commencement and completion of each component of the Project certified by the Borrower and Approved by the Administrative Agent.

Contingent Obligation means, as to any Person, without duplication, any obligation required to be disclosed in the footnotes to such Person's financial statements in accordance with GAAP, guaranteeing partially or in whole any non-recourse Debt, lease, dividend or other obligation, excluding (a) obligations consisting of guarantees, earn-outs, indemnities or obligations in respect of purchase price adjustments in connection with the acquisition or disposition of securities or other Assets of such Person or any other Person, and (b) guarantees of loan commitments or of construction loans to the extent the same have not been drawn. The amount of any Contingent Obligation described in the preceding sentence shall be deemed to be an amount equal to the lesser of (i) the stated or determinable amount of the primary obligation in respect of which such guaranty is made and (ii) the maximum amount for which such Person may be liable pursuant to the terms of the agreements embodying such Contingent Obligation or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as recorded in the footnotes to the most recent financial statements of the applicable Person required to be delivered pursuant hereto. Notwithstanding anything contained herein to the contrary, guarantees of completion and non-recourse carve outs in secured loans shall not be deemed to be Contingent Obligations unless and until a claim for payment has been made thereunder and is due and owing, at which time any such guaranty of completion shall be deemed to be a Contingent Obligation in an amount equal to any such claim that is due and owing. Subject to the immediately preceding sentence, (x) in the case of a joint and several guaranty given by such Person and another Person (but only to the extent such guaranty is recourse, directly or indirectly to the applicable Person or its Subsidiaries), the amount of the guaranty shall be deemed to be 100% thereof unless and only to the extent that such other Person either has delivered Cash or Cash Equivalents or a letter of credit or other similar arrangement to secure all or any part of such Person's guaranteed obligations, and (y) in the case of a guaranty (whether or not joint and several) of an obligation otherwise constituting Debt of such Person, the amount of such guaranty shall be deemed to be only that amount in excess of the amount of the obligation constituting Debt of such Person.

Contract of Sale means collectively, (a) that certain Purchase and Sale Agreement, dated December 22, 2005, by and between Utah Coal & Lumber, Inc., a Utah corporation, Diane Jordan Smith, Trustee of the Diane Jordan Smith Trust U/A/D August 27, 1987 and Easy Street Partners, LLC, a Utah limited liability company and (b) that certain Escrow Agreement, dated August, 2005 by and between Cloudnine Resorts, LLC, a Utah limited liability

company, AVG-SL, LLC, a Utah limited liability company, Easy Street Partners, LLC, a Utah limited liability company, Utah Coal & Lumber, Inc., a Utah corporation, Diane Jordan Smith, Trustee of the Diane Jordan Smith Trust U/A/D August 27, 1987 and Equity Title Insurance Agency, Inc.¹

Control means with respect to any Person, the possession of the power (directly or indirectly) to direct or cause the direction of the management and policies of such Person, whether through the ownership of stock, by contract or otherwise. **Controlling** and **Controlled** have meanings correlative thereto.

Conversion Date has the meaning given to such term in Section 2.15.

Counterparty means any obligor under an Interest Rate Protection Agreement, other than the Borrower.

Counterparty Consent has the meaning given to such term in Section 6.1(u).

Credit Card Companies has the meaning given to such term in Section 4.2(b).

Credit Card Company Agreement shall mean any contract or other agreement to which the Borrower or the Hotel Operator is a party relating to any credit cards accepted by the Borrower in connection with the operation of the Property.

Credit Card Receivables shall mean all cash, checks, drafts, receipts, items and other instruments for the payment of money which the Borrower or the Hotel Operator has or may hereafter receive pursuant to the terms of any Credit Card Company Agreement or otherwise in connection with the Hotel.

Debt of any Person means, without duplication, means, with respect to any Person: (a) all indebtedness for borrowed money or for the deferred purchase price of property or services (including all obligations, contingent or otherwise in connection with letter of credit facilities, acceptance facilities or other similar facilities); (b) all obligations evidenced by bonds, notes, debentures or other similar instruments; (c) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property); (d) all capital lease obligations; (e) all Contingent Obligations; and (f) all Indebtedness of the nature referred to in clauses (a) through (e) above of another Person guaranteed directly or indirectly or secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including accounts and contract rights) owned by the Person with respect to whom Debt is being determined, even though such Person has not assumed or become liable for the payment of such Debt.

¹ Please advise as to the execution dates of both the Purchase and Sale Agreement and the Escrow Agreement.

Debt Service Coverage Ratio means, for any period, the ratio of (a) Net Operating Income for the applicable period to (b) the sum of (i) monthly interest payments due on the Outstanding Principal during such period based on a rate of interest per annum equal to the then prevailing 10-year Treasury Rate plus three hundred basis points (3.00%), and (ii) any principal amortization payments payable during the applicable period in accordance with the terms of this Agreement. The Debt Service Coverage Ratio shall be calculated at the end of each calendar month on a trailing 12-month basis.

Debt Service Reserve Account has the meaning given to such term in Section 4.1(b)(iv).

Default means any event which, but for the passage of time or giving of notice, would constitute an Event of Default.

Default Rate means a rate of interest per annum equal at all times to the lesser of (i) the maximum non-usurious rate permitted by Law and (ii) four percent (4.0%) above the Base Rate plus the Applicable Margin.

Defaulting Lender has the meaning given to such term in Section 8.9(b).

Deficiency has the meaning given to such term in Section 8.9(b).

Deposit means any good faith or escrow deposit made by a Purchaser pursuant to a Purchase Agreement. Deposits shall not include any refundable deposit made by a prospective Purchaser under a Reservation until and unless such Reservation is converted to a binding Purchase Agreement.

Depository means Zions First National Bank or any other bank reasonably acceptable to the Administrative Agent at which bank the Accounts shall be maintained and that shall be party to the Depository Agreement.

Depository Agreement means a depository agreement, in form and substance Approved by the Administrative Agent, by and among the Borrower, the Administrative Agent and the Depository.

Determination Date has the meaning given to such term in the definition of LIBO Rate.

Developer means CloudNine Resorts/Sky Lodge Development, LLC.

Development Agreement means that certain Development Agreement, dated as of the date hereof, pursuant to which the Borrower has retained the Developer for the purpose of developing the Project.

Draw Request means, with respect to each Advance, the Borrower's request for such Advance, together with the documents and deliveries required by this Agreement to be furnished to the Administrative Agent as a condition to such Advance.

DSCR Trigger has the meaning given to such term in Section 4.4(a).

Eligible Account means (a) a segregated account maintained with a federal or state chartered depository institution or trust company which complies with the definition of Eligible Institution or (b) a segregated trust account or accounts maintained with the corporate trust department of a federal depository institution or state chartered depository institution which has an investment grade rating and is subject to regulations regarding fiduciary funds on deposit under, or similar to, Title 12 of the Code of Federal Regulations Section 9.10(b) which, in either case, has corporate trust powers, acting in its fiduciary capacity.

Eligible Assignee means any Person other than a Loan Party or an Affiliate of a Loan Party which is: (a) a Lender; (b) an Affiliate of a Lender; (c) a commercial bank organized under the laws of the United States, or any state thereof, and having a combined capital and surplus of at least FOUR HUNDRED MILLION and 00/100 DOLLARS (\$400,000,000.00); (d) a savings and loan association or savings bank organized under the laws of the United States, or any State thereof, and having a combined capital and surplus of at least FOUR HUNDRED MILLION and 00/100 DOLLARS (\$400,000,000.00); (e) a commercial bank organized under the laws of any other country that is a member of the Organization for Economic Cooperation and Development or has concluded special lending arrangements with the International Monetary Fund associated with its General Arrangements to Borrow or a political subdivision of any such country, and having a combined capital and surplus of at least FIVE HUNDRED MILLION and 00/100 DOLLARS (\$500,000,000.00), so long as such bank is acting through a branch or agency located in the United States or (f) a finance company, insurance company or other financial institution or fund (whether a corporation, partnership, trust or other entity) that is engaged in making, purchasing or otherwise investing in commercial loans in the ordinary course of its business and having a combined capital and surplus of at least TWO HUNDRED FIFTY MILLION and 00/100 DOLLARS (\$250,000,000.00).

Eligible Institution means an institution (i) whose commercial paper, short term debt obligations or other short term deposits are rated at least A-1, Prime-1 or F-1, as applicable, by each of the Rating Agencies and whose long term senior unsecured debt obligations are rated at least AA- or Aa2, as applicable, by each of the Rating Agencies, and whose deposits are insured by the FDIC or (ii) Approved by the Administrative Agent.

Environmental Indemnity means the Environmental Indemnity in substantially the form of Exhibit H granted jointly and severally by the Borrower and the Sponsor in favor of the Administrative Agent and the Lenders, dated of even date herewith.

Environmental Report means, that certain Phase I Environmental Site Assessment for Sky Lodge Condominiums, dated October 3, 2005 prepared by Gordon Spilker Huber Geotechnical Consultants, Inc..

ERISA means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

ERISA Affiliate means any Person, that for purposes of Title IV of ERISA, is a member of the controlled group of any Loan Party, or under common control with any Loan Party, within the meaning of Section 414 of the Internal Revenue Code.

ERISA Event means (a) (i) the occurrence of a reportable event, within the meaning of Section 4043 of ERISA, with respect to any Plan unless the thirty (30) day notice requirement with respect to such event has been waived by the PBGC; or (ii) the requirements of subsection (1) of Section 4043(b) of ERISA (without regard to subsection (2) of such Section) are met with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, of a Plan, and an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such Plan within the following thirty (30) days; (b) the application for a minimum funding waiver with respect to a Plan; (c) the provision by the administrator of any Plan of a notice of intent to terminate such Plan, pursuant to Section 4041(a)(2) of ERISA (including any such notice with respect to a plan amendment referred to in Section 4041(e) of ERISA); (d) the cessation of operations at a facility of any Loan Party or any ERISA Affiliate in the circumstances described in Section 4062(e) of ERISA; (e) the withdrawal by any Loan Party or any ERISA Affiliate from a Multiple Employer Plan during a plan year for which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (f) the conditions for imposition of a lien under Section 302(f) of ERISA shall have been met with respect to any Plan; (g) the adoption of an amendment to a Plan requiring the provision of security to such Plan, pursuant to Section 307 of ERISA; or (h) the institution by the PBGC of proceedings to terminate a Plan pursuant to Section 4042 of ERISA, or the occurrence of any event or condition described in Section 4042 of ERISA that constitutes grounds for the termination of, or the appointment of a trustee to administer, such Plan.

Eurocurrency Liabilities has the meaning given to such term in Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time and including any successor regulation thereto.

Event of Default has the meaning given to such term in Section 9.1.

Exculpated Parties has the meaning given to such term in Section 10.6.

Existing Improvements means all Improvements located on the Land as of the date of this Agreement.

Extension Date has the meaning given to such term in Section 2.16.

FF&E has the meaning given to such term in the Security Instrument.

FF&E Deposit has the meaning given to such term in Section 4.3(ii).

FF&E Reserve Account has the meaning given to such term in Section 4.1(b)(ii).

Final Completion means the date when Substantial Completion shall have occurred, all Punchlist Items shall have been completed, a final Certificate of Occupancy shall have been issued for the each element of the Improvements (including the restaurants and the

spa) and all other conditions precedent to the final Advance in respect of Retainage shall have been satisfied.

Financing Statements means UCC Financing Statement(s) in favor of the Administrative Agent giving notice of a security interest, which Financing Statement(s) are to be filed in the appropriate public records on or about the Closing Date.

Fitch means Fitch, Inc. and its successors.

Force Majeure Event means any of the following: (a) acts of terrorism or declared or undeclared war by a foreign enemy; (b) riots, civil unrest or sabotage; (c) fire or other casualty or condemnation; (d) floods; (e) earthquakes, abnormal weather conditions or other acts of God; (f) unforeseeable material shortages in labor, energy, services or materials beyond the Borrower's reasonable control; (g) labor strikes, work stoppages, job actions or similar labor problems not specific to the Project; (h) government restrictions arising after the date of this Agreement (e.g. general building or utility moratorium that makes the renovation or re-positioning of the Existing Improvements or development of the Additional Improvements impractical or impossible); (i) the failure of Park City, Summit County or the State of Utah to issue any required license, registration or permit within the time period for the issuance thereof prescribed by applicable law, statute or ordinance, despite timely satisfaction by the Borrower of all conditions precedent to the issuance of such license, registration or permit; or (j) the failure of the Administrative Agent or any Lender to timely perform their obligations under the Loan Documents.

Fractional Ownership Documents means (a) the Property Disclosure Report and all of the exhibits attached thereto, including, without limitation, the form of purchase and sale agreement for the sale of the Fractional Ownership Units, (b) Purchase Agreements, (c) any rules and regulations for the Fractional Ownership Units, (d) organizational documents for the Fractional Ownership Units owners' association, (e) the Condominium Documents and (f) any other documents relating to the formation, organization or sale of the Fractional Ownership Units.

Fractional Ownership Recordation Documents means those Fractional Ownership Documents which must be filed or recorded with the applicable Condominium Authority or the land records or with any other applicable Governmental Authority in order to legally create and subdivide each of the Fractional Ownership Units pursuant to a timeshare and condominium regime and enter into binding Purchase Agreements for the sale of Fractional Ownership Units or interests therein.

Fractional Ownership Unit means one of the units created by the Fractional Ownership Documents or the applicable shared interest therein, as the context may require, and any appurtenant interest in the common elements and the Land created by the Fractional Ownership Documents.

GAAP means generally accepted accounting principles in effect in the United States of America from time to time, consistently applied.

General Contractor means an experienced general contractor retained by the Borrower to construct the Additional Improvements and Approved by the Administrative Agent (which approval shall be based in part on a review of such general contractor's financial statements which must be acceptable to the Administrative Agent in all respects).

General Contractor's Agreement means a guaranteed maximum price contract for the renovation of the Existing Improvements and the construction of the Additional Improvements in accordance with the Plans and Specifications and as contemplated herein, between the Borrower and the General Contractor providing for a construction contingency of not less than five percent (5.0%) and otherwise in form and substance acceptable to the Administrative Agent.

General Contractor's Certificate means a certificate of the General Contractor in the form of Exhibit J.

Governmental Authority means any nation or government, any state or other political subdivision thereof, and any Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to such government, including, without limitation, the United States of America and Germany, the state in which the Property is located and the state in which any Loan Party resides or is located or organized, any political subdivision thereof, municipalities in which the Property is located, and any agency, authority, department, commission, board, bureau or instrumentality of any of them.

Gross Revenues means, for any period of determination, all Rents and Profits (as such term is defined in the Security Instrument) from the Property for such period; provided, that Gross Revenues shall not include (a) any proceeds from the sales of Fractional Ownership Units (or fractional interests therein), including any Deposits; (b) gratuities or service charges or other similar receipts which are to be paid over to any Property employees or Persons occupying similar positions for performing similar duties; (c) proceeds of insurance or other money or credits received in settlement for loss, theft or damage to property relating to or used in the Property (other than the proceeds of any business interruption insurance received with respect to the Property); (d) excise taxes, sales taxes, use taxes, bed taxes, admission taxes, tourist taxes, gross receipts taxes, value added taxes, entertainment taxes, or other taxes or similar charges payable to Governmental Authorities; (e) any amounts otherwise included in Gross Revenues to the extent such amounts are refunded to guests and patrons; (f) such other exclusions requested by the Borrower and Approved by the Administrative Agent in its sole and absolute discretion; and (g) any amounts recovered in any legal actions or proceedings, or settlements thereof, arising out of the operation of the Property except to the extent such amounts would otherwise have been included in Gross Revenues.

Hedge Breakage means any losses, costs, charges or damages (other than consequential or exemplary damages) incurred by the Counterparty as a result of any early termination, breach or default of any Interest Rate Protection Agreement or the entering into a new Interest Rate Protection Agreement.

Hedge Payments means any payments which the Borrower is required to make pursuant to any Interest Rate Protection Agreement other than Hedge Breakage.

Hedge Rate means the rate specified in any Interest Rate Protection Agreement.

HOA Deposit has the meaning given to such term in Section 4.3(iii).

HOA Reserve Account has the meaning given to such term in Section 4.1(b)(iii).

Hotel means a full-service, luxury resort hotel located on the Land, which will consist of the Existing Improvements, as modified and supplemented by the Additional Improvements to be constructed on the Land in accordance with the Plans and Specifications (together with any and all permitted additions thereto and replacements thereof), and which shall be known as "The Sky Lodge Private Residence Club and Hotel" or such other name that is reasonably acceptable to the Administrative Agent.

Hotel Management Agreement means that certain Sky Lodge Management Agreement effective as of January 1, 2007, pursuant to which the Borrower has retained the Hotel Operator to manage and operate the Property.

Hotel Operator means CloudNine Resorts/Sky Lodge Management, LLC.

Hurdle DSCR means, for any Test Period, a Debt Service Coverage Ratio of 1.30 to 1.00 or better.

Impositions means and includes all taxes, assessments for public improvements or benefits and any payments in lieu thereof, whether or not commenced or completed prior to the Closing Date or while any portion of the Outstanding Principal is outstanding, water rates and sewer rents, charges, license fees, permit fees, inspection fees and other governmental levies or payments, of every kind and nature whatsoever, general and special, foreseen or unforeseen, ordinary and extraordinary, which now or at any time hereafter may be assessed, levied, confirmed, imposed or which may become a lien upon the Property, or any portion thereof, or which are payable with respect thereto, or upon the rents, issues, revenue, income, proceeds or profits thereof, or on the occupancy, operation, use, possession or activities thereof, whether any or all of the same be levied directly or indirectly or as excise or income or franchise taxes in lieu of taxes which are otherwise imposed upon property of the same type as the Property, together with any penalties or other charges with respect to the late payment or non-payment thereof.

Improvements shall mean any building (including footings and foundations), furniture, fixtures and equipment and other improvements and appurtenances of every kind and description now existing or hereafter erected, renovated, constructed or placed upon the Land (whether temporary or permanent) and any and all alterations and replacements thereof, additions thereto and substitutions therefor, including, without limitation, the Existing Improvements and the Additional Improvements.

Indemnified Costs has the meaning given to such term in Section 8.5(a).

Indemnified Party has the meaning given to such term in Section 11.8(a).

Indemnitor has the meaning given to such term in Section 11.8(a).

Initial Advance has the meaning given to such term in Section 3.1.

Insufficiency means, with respect to any Plan, the amount, if any, of its unfunded benefit liabilities, as defined in Section 4001(a)(18) of ERISA.

Insurance Proceeds has the meaning given to such term in the definition of Net Proceeds.

Intercreditor Agreement means that certain Intercreditor Agreement, dated as of the date hereof, by and between Administrative Agent and Mezzanine Lender.

Interest means all interest payable pursuant to the Notes or any of the other Loan Documents.

Interest Period means, for any LIBOR Loan, the time during which the applicable LIBO Rate is in effect with respect to such LIBOR Loan, which period shall be the period commencing, (a) with respect to the initial Interest Period, on the date on which the Initial Advance is funded by the Lenders or (b) with respect to each subsequent Interest Period, on the first day of each calendar month occurring after the date of the Initial Advance and ending one month thereafter provided that (i) whenever the last day of any Interest Period would otherwise occur on a day other than a Business Day, the last day of such Interest Period shall be extended to occur on the next succeeding Business Day unless such extension would cause the last day of such Interest Period to occur in the next following calendar month, in which case the last day of such Interest Period shall occur on the immediately preceding Business Day, and (ii) no Interest Period shall commence or end after the Maturity Date.

Interest Rate means, for any Interest Period, at the Borrower's election pursuant to a Rate Request, (a) the Base Rate plus the Applicable Margin or (b) the LIBO Rate plus the Applicable Margin.

Interest Rate Protection Agreement means an interest rate protection agreement entered into by the Borrower with the Administrative Agent or any Lender in a notional amount equal to the principal amount of the Loan, and otherwise in form and substance reasonably acceptable to the Administrative Agent and with a Hedge Rate acceptable to the Administrative Agent in its sole discretion.

Interim Loan means the Loan in the event of and after conversion as set forth in Section 2.15.

Land means approximately 1.13 acres of real property owned by the Borrower and more particularly described on Exhibit A, together with all rights and appurtenances thereto.

Late Charge has the meaning given to such term in Section 2.11.

Law or Laws means all present and future laws, statutes, treaties, codes, permits, decrees, ordinances, orders, rules, regulations, determinations or requirements of any governmental authority, arbiter or court, including, without limitation, any environmental laws, any building, use, zoning and land use laws or regulations (including set back requirements), the ADA and any applicable covenants and restrictions pursuant thereto relating in any way to the Property, any Loan Party, any Lender or the Administrative Agent.

Lease means any lease, sublease or occupancy agreement for any portion of the Property, including, without limitation, retail space, restaurant space, health spa and garage, whether entered into by the Borrower or the Hotel Operator.

Lenders has the meaning set forth in the preamble to this Agreement.

LIBOR Breakage Costs has the meaning given to such term in Section 2.10(d).

LIBOR Loan means any portion of the Outstanding Principal of the Loan, designated by the Borrower, at least three (3) Business Days before the end of the then current Interest Period to bear interest at the LIBO Rate plus the Applicable Margin.

LIBO Rate means, as to any LIBOR Loan with respect to the applicable Interest Period, (a) the rate per annum equal to the offered rate for one month deposits in United States Dollars for amounts comparable to the applicable LIBOR Loan, that appears on Dow Jones Markets Service (formerly known as Telerate) display page 3750 as of 11:00 A.M. (London time) two (2) Business Days prior to the first day of the applicable Interest Period (the *Determination Date*) divided by (b) one minus the LIBO Reserve Percentage. "Dow Jones Markets Service display page 3750" means the display designated as "page 3750" on the Dow Jones Markets Service (or such other page as may replace page 3750 on that service or such other service as may be nominated by the British Bankers' Association as the information vendor for the purpose of displaying British Bankers' Association Interest Settlement Rates for U.S. Dollar deposits). If such rate does not appear on Dow Jones Markets Service page 3750 as of approximately 11:00 A.M. (London time) on the Determination Date, the LIBO Rate for the Interest Period will be determined by the Administrative Agent on the basis of the offered rates for deposits in U.S. Dollars for an amount comparable to the principal amount of the applicable LIBOR Loan for the same period of time as such Interest Period that are offered by four (4) major banks in the London interbank market at approximately 11:00 A.M. (London time) on the Determination Date. The Administrative Agent will request that the principal London office of each of the four (4) major banks provide a quotation of its U.S. Dollar deposit offered rate. If at least two such quotations are provided, the LIBO Rate will be the arithmetic mean of the quotations. If fewer than two (2) quotations are provided as requested, the LIBO Rate will be determined by the Administrative Agent on the basis of the rates quoted for loans in U.S. Dollars to leading European banks for amounts comparable to the principal amount of the applicable LIBOR Loan for the same period of time as such Interest Period offered by major banks in New York, New York at approximately 11:00 A.M. (New York time) on the Determination Date. If at least two (2) such rates are so provided, the LIBO Rate will be the arithmetic mean of the quotations. If fewer than two (2) rates are provided, the LIBO Rate which was used to determine

the last LIBO Rate in effect with respect to the applicable LIBOR Loan shall be deemed to be the LIBO Rate.

LIBO Reserve Percentage means the percentage representing the reserve requirement applicable to Eurocurrency Liabilities pursuant to Regulation D of the Board of Governors of the Federal Reserve System (or any successor thereto). In determining the LIBO Reserve Percentage, the Administrative Agent shall take into account any transitional adjustment or phase-in provisions of the reserve requirements otherwise applicable to Eurocurrency Liabilities during the applicable Interest Period, and, in the event of any change or variation in the reserve requirements during the applicable Interest Period, the Administrative Agent may use any reasonable averaging or attribution methods which it deems appropriate. The determination by the Administrative Agent of any applicable LIBO Reserve Percentage shall be conclusive, absent manifest error. Failure by the Administrative Agent to take into account the LIBO Reserve Percentage when calculating Interest due with respect to a LIBOR Loan shall not constitute, whether by course of dealing or otherwise, a waiver by the Administrative Agent of its right to collect such amounts for any future period.

Lien means any lien, security interest, deed or other charge or encumbrance of any kind, including, without limitation, the lien or retained security title of a conditional vendor and any easement, right of way or other encumbrance on title to real property.

Listing Agent means Extreme Holding, LLC, a Utah limited liability company doing business as Prudential Utah Real Estate.

Listing Agreement means that certain Exclusive Right to Sell Listing Agreement, dated as of June 11, 2005, pursuant to which the Borrower has retained Listing Agent to market and sell the Fractional Ownership Units.

Liquor License has the meaning given to such term in Section 5.20.

LLC Agreement means that certain Amended and Restated Operating Agreement of the Borrower, dated as of March 1, 2006.

Loan means that certain loan in a maximum principal amount equal to the Loan Amount, together with interest thereon, to be advanced by the Lenders pursuant to the terms and conditions of this Agreement and evidenced by the Notes.

Loan Amount means an amount equal to the lesser of (i) Sixty-Five Percent (65.0%) of the Total Project Costs, (ii) Sixty-Five Percent (65.0%) of the Appraised Value of the Property upon Final Completion of the Project and (iii) THIRTY SIX MILLION SEVEN HUNDRED SEVENTY-NINE THOUSAND TWO HUNDRED TWENTY-FOUR AND 00/100 DOLLARS (\$36,779,224.00).

Loan Documents means, collectively, this Agreement, all documents referred to in Section 3.1, the Interest Rate Protection Agreement, the Depository Agreement, all other documents referred to in Section 3.1, the Mandate Letter and all other agreements and

documents evidencing, securing or otherwise executed and delivered in connection with the Loan.

Loan Party means each of the Borrower, the Borrower's Member and the Sponsor.

Loan Year means the period commencing on the date of this Agreement to and including December 31, 2006, and thereafter each twelve (12) month period commencing on each January 1 during the term of the Loan; provided, that the last Loan Year shall end on the Maturity Date of the Loan.

Lockbox Account has the meaning given to the term in Section 4.1(a).

Losses has the meaning given to such term in Section 11.8(a).

MAI has the meaning given to such term in the definition of Appraisal.

Major Contracts means any contract or subcontract for labor or materials in connection with the Project that provides for an aggregate contract price equal to or greater than ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000.00), whether pursuant to one (1) contract or agreement or multiple contracts or agreements, after taking into account all Change Orders.

Major Contractor means any contractor under a Major Contract, including, without limitation, the General Contractor.

Major Subcontractor means any subcontractor under a subcontract that constitutes a Major Contract.

Mandate Letter means that certain letter agreement, dated as of August 23, 2005, between the Administrative Agent, the Borrower and Sponsor regarding, among other items, payment of Loan fees by the Borrower.

Material Adverse Effect means any fact, event or circumstance which, individually or in the aggregate, in the reasonable determination of the Administrative Agent, materially and adversely affects (a) the physical condition or value of the Property, (b) the ability of the Borrower to complete the Additional Improvements on or before the Completion Date, (c) the ability of any Loan Party to perform its obligations under the Loan Documents to which it is a party, (d) the licenses, authorizations or approvals applicable to any Loan Party or the Improvements necessary for the Project or the ownership and operation of the Hotel or (e) the validity or enforceability of the Loan Documents or the rights, remedies, options or benefits of the Lenders thereunder.

Material Operating Agreement means any Operating Agreement which (a) imposes an obligation on the Borrower or any Affiliate of the Borrower to pay more than fifty thousand dollars (\$50,000) per annum or (b) has a term of greater than one (1) year and may not

be terminated by the Borrower or the applicable Affiliate of the Borrower without cause or material penalty or premium upon thirty (30) or fewer days' notice.

Maturity Date means the earlier to occur of the following:

(a) the date upon which the entire Outstanding Principal balance, together with all unpaid interest thereon and other amounts due to the Lenders under the Loan Documents, shall be due and payable in immediately available funds due to the occurrence of an Event of Default under the Loan Documents; and

(b) the date that is thirty-six (36) months after the date hereof (the ***Construction Loan Term***); unless the Loan is converted into the Interim Loan pursuant to Section 2.15, in which event, the date that is forty-eight (48) months after the date hereof, unless the Interim Loan is extended pursuant to Section 2.16, in which event, the date that is sixty (60) months after the date hereof.

Mezzanine Borrower means Easy Street Mezzanine LLC, a Delaware limited liability company.

Mezzanine Lender means BayNorth Realty Fund VI, Limited Partnership, a Delaware limited partnership.

Mezzanine Loan means the loan made pursuant to the Mezzanine Loan Agreement, in the amount of \$11,250,000.00.

Mezzanine Loan Agreement means that certain Mezzanine Loan Agreement, dated as of the date hereof, by and between Mezzanine Borrower and Mezzanine Lender.

Mezzanine Loan Documents has the meaning given to such term in the Intercreditor Agreement.

Minimum Purchase Price means the minimum purchase price required for the release of each Fractional Ownership Unit or fractional interest therein as provided on Exhibit K.

Monthly Budgeted Amount has the meaning given to such term in Section 4.4(a)(v).

Monthly Debt Service Amount has the meaning given to such term in Section 4.4(a)(i).

Moody's means Moody's Investors Services, Inc. and its successors.

Multiple Employer Plan means a single employer plan, as defined in Section 4001(a)(15) of ERISA, that (a) is maintained for employees of any Loan Party or any ERISA Affiliate and at least one Person other than the Loan Parties and the ERISA Affiliates or (b) was so maintained and in respect of which any Loan Party or any ERISA Affiliate could have

liability under Section 4064 or 4069 of ERISA in the event such plan has been or were to be terminated.

Net Operating Income for any period means Gross Revenues for the applicable period minus Operating Expenses for such period.

Net Proceeds means: (y) the net amount of all insurance proceeds received by the Administrative Agent as a result of any damage or destruction to the Property, after deduction of the Administrative Agent's reasonable out-of-pocket costs and expenses (including, but not limited to, reasonable counsel fees), if any, actually incurred in collecting same (*Insurance Proceeds*); or (z) the net amount of all condemnation awards, proceeds and payments received by the Administrative Agent with respect to any Partial Condemnation or Total Condemnation (as applicable), after deduction of the Administrative Agent's reasonable out-of-pocket costs and expenses (including, but not limited to, reasonable counsel fees), if any, actually incurred in collecting same (*Condemnation Proceeds*), whichever the case may be.

Net Proceeds Deficiency has the meaning given to such term in Section 12.2(a)(vi).

Net Sales Proceeds means, for any Fractional Ownership Unit, an amount equal to the gross sales price and all other consideration from whatever source derived from the sale of such Fractional Ownership Unit by the Borrower, minus actual and customary closing costs and brokerage commissions incurred by the Borrower and paid to Persons other than Affiliates of the Borrower in connection with such sale.

Notes means each of the promissory notes issued by the Borrower to the Lenders to evidence the Loan, each of which shall be substantially in the form of Exhibit C.

Obligation means, collectively, all present and future indebtedness, obligations, duties and liabilities of Borrower and the other Loan Parties to Administrative Agent and Lenders arising pursuant to this Loan Agreement, any Interest Rate Protection Agreement or the other Loan Documents or evidenced by any Note, and all interest accruing thereon, together with reasonable attorneys' fees and disbursements incurred in the drafting, negotiation, enforcement or collection thereof and of the other Loan Documents, regardless of whether such indebtedness, obligations, duties or liabilities are direct, indirect, fixed, contingent, joint, several or joint and several, including, without limitation, any liability of Borrower or any other Loan Party on any claim, whether or not the right of any creditor to payment in respect of such claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, disputed, undisputed, legal, equitable, secured or unsecured, and whether or not such claim is discharged, stayed or otherwise affected by any proceeding referred to in Section 9.1(f).

OFAC List means the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and any other similar list maintained by the U.S. Treasury Department, Office of Foreign Assets Control pursuant to any Law, including, without limitation, trade embargo, economic sanctions, or other prohibitions imposed by Executive Order of the President

of the United States. The OFAC List currently is accessible through the internet website www.treas.gov/ofac/tl1sda.pdf.

Opening Date means the earliest date on which (i) any of the Fractional Ownership Units are available for occupancy or (ii) hotel operations commence.

Operating Account has the meaning given to such term in Section 4.1(a).

Operating Agreement means any agreement entered into by the Borrower or any Affiliate of Borrower, other than the Hotel Management Agreement, the Development Agreement, the Leases and the Construction Contracts, which agreement relates to the ownership, operation or maintenance of, or the use, licensing or leasing of, any personal property or equipment in connection with the operation and maintenance of, the Property.

Operating Budget has the meaning given to such term in Section 6.1(t).

Operating Expenses means, during any period of determination, without duplication, with respect to the Property, (a) any and all actual cash operating expenses relating to the operation of the Property during such period, (b) the costs incurred for ordinary maintenance and repairs of, and necessary capital improvements to, such Property during such period, but, in the case of necessary capital improvements, only to the extent that such costs are treated as current expenses in accordance with the Accounting Rules, (c) other than Taxes paid out of the Tax and Insurance Account, Taxes (other than income taxes) paid during such period, (d) all amounts paid to the Hotel Operator pursuant to the Hotel Management Agreement, (e) all amounts deposited during such period into the Tax and Insurance Account; and (f) any and all fees charged by credit card servicing companies. Operating Expenses shall not include any, (i) expenses which are extraordinary in nature and which would, under the Accounting Rules, be considered "non-recurring," (ii) payments of interest and principal on the Loan, (iii) depreciation and amortization, (iv) commissions or other expenses in connection with the formation, marketing or sale of the Fractional Ownership Units and (v) Project Costs. Generally, Operating Expenses will not include amounts paid with funds from any reserve to the extent deposits into such reserves are included as an Operating Expense.

Outstanding Principal means, with respect to the Loan, the aggregate principal amount of Advances remaining unpaid under the Notes from time to time.

Park City Development Agreement means the Development Agreement for the Union Square Master Planned Development, Park City, Summit County, Utah, dated as of May 12, 2005, by and between CloudNine Resorts, LLC and the municipality of Park City, Utah.

Partial Condemnation means any condemnation or eminent domain proceeding or action (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking) by any Governmental Authority, whether for any permanent or temporary use, occupancy or other interest affecting such portion of the Property other than a Total Condemnation.

Payment Date means the first Business Day of each calendar month during the term of the Loan.

Performance Bonds means dual-obligee performance bond (with a dual obligee rider naming the Administrative Agent as such dual obligee) covering the General Contractor's obligations under the General Contractor's Agreement in form and substance and issued by a surety company or companies acceptable to the Administrative Agent in its sole discretion, in each case in an amount not less than the full contract price.

Permits means all material licenses, approvals, authorizations, accreditations, consents, permits, variances and certificates required under applicable Laws in connection with the design, development, construction, ownership, operation, use or occupancy of the Property (including, without limitation, business licenses, state health department licenses, liquor licenses, certificates of completion and occupancy permits and all such other permits, licenses and rights, obtained from any Governmental Authority or private Person concerning the design, development, construction, ownership, operation, use or occupancy of the Property) as the same may be modified, amended, extended, supplemented or assigned from time to time, but excluding licenses, approvals, authorizations, accreditations, consents, permits, variances and certificates, the responsibility for which is solely that of any Tenant.

Permitted Encumbrances means, collectively, (a) the Liens created by the Loan Documents, (b) the Liens and other matters disclosed in the Title Insurance Policy, (c) Liens, if any, for Taxes imposed by any Governmental Authority not yet due, payable or delinquent and (d) such other Liens as the Administrative Agent has approved or may approve in writing in the Administrative Agent's good faith discretion.

Permitted Exceptions means those matters listed in Exhibit L and any other matter Approved by the Administrative Agent.

Permitted Indebtedness means, collectively, (a) the Loan, and (b) trade payables or accrued expenses incurred in the ordinary course of the business set forth in Section 6.5(e) (including equipment and capital leases).

Permitted Investments means any one or more of the following obligations or securities acquired at a purchase price of not greater than par and meeting one of the appropriate standards set forth below:

(a) obligations of, or obligations fully guaranteed as to payment of principal and interest by, the United States or any agency or instrumentality thereof, provided such obligations are backed by the full faith and credit of the United States of America including, without limitation, obligations of: the U.S. Treasury (all direct or fully guaranteed obligations), the Farmers Home Administration (certificates of beneficial ownership), the General Services Administration (participation certificates), the U.S. Maritime Administration (guaranteed Title XI financing), the Small Business Administration (guaranteed participation certificates and guaranteed pool certificates), the U.S. Department of

Housing and Urban Development (local authority bonds) and the Washington Metropolitan Area Transit Authority (guaranteed transit bonds);

(b) Federal Housing Administration debentures;

(c) obligations of the following United States government sponsored agencies: Federal Home Loan Mortgage Corp. (debt obligations), the Farm Credit System (consolidated system-wide bonds and notes), the Federal Home Loan Banks (consolidated debt obligations), the Federal National Mortgage Association (debt obligations), the Student Loan Marketing Association (debt obligations), the Financing Corp. (debt obligations), and the Resolution Funding Corp. (debt obligations);

(d) federal funds, unsecured certificates of deposit, time deposits, bankers' acceptances and repurchase agreements with maturities of not more than 364 days of any bank, the short term obligations of which at all times are rated in the highest short term rating category by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency in the highest short term rating category);

(e) fully Federal Deposit Insurance Corporation-insured demand and time deposits in, or certificates of deposit of, or bankers' acceptances issued by, any bank or trust company, savings and loan association or savings bank, the short term obligations of which at all times are rated in the highest short term rating category by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency in the highest short term rating category);

(f) demand and time deposits with, or certificates of deposit of, or bankers' acceptances issued by, JP Morgan Chase Bank;

(g) debt obligations with maturities of not more than 365 days and at all times rated by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency);

(h) commercial paper (including both non-interest-bearing discount obligations and interest-bearing obligations) payable on demand or on a specified date not more than one year after the date of issuance thereof and that at all times is rated by each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency) in its highest short-term unsecured debt rating;

(i) units of taxable money market funds or mutual funds, which funds are regulated investment companies, seek to maintain a constant net asset value per share and have the highest rating from each Rating Agency (or, if not rated by all Rating Agencies, rated by at least one Rating Agency) for money market funds or mutual funds; and

(j) any other security, obligation or investment which has been

approved as a Permitted Investment in writing by the Agent;

provided, that (1) the investments described in clauses (a), (c), (d), (e), (f), (g) and (h) must (w) have a predetermined fixed dollar amount of principal due at maturity (or demand) that cannot vary or change, (x) if rated by S&P, not have an "Y" highlighter affixed to their rating, (y) if such investments have a variable rate of interest, have an interest rate tied to a single interest rate index plus a fixed spread (if any) and must move proportionately with that index, and (z) not be subject to liquidation prior to their maturity, (2) such instrument continues to qualify as a "cash flow investment" pursuant to Code Section 860G(a)(6) earning a passive return in the nature of interest and (3) no obligation or security shall be a Permitted Investment if (x) such obligation or security evidences a right to receive only interest payments or (y) the right to receive principal and interest payments on such obligation or security are derived from an underlying investment that provides a yield to maturity in excess of 120% of the yield to maturity at par of such underlying investment.

Person means an individual, corporation, limited liability company, business trust, partnership, limited partnership, joint venturer, joint tenant or tenant-in-common, trust, unincorporated organization, or any other entity of whatever nature, or Governmental Authority.

Personal Property means materials, furnishings, fixtures, machinery, equipment and all items of tangible and intangible personal property now or hereafter owned by the Borrower, wherever located, and: (a) to be incorporated into the Improvements; (b) used in connection with the construction of the Improvements; or (c) to be used in connection with the operation of the Property.

Plan means a Single Employer Plan or a Multiple Employer Plan.

Plans and Specifications means the plans and specifications for the development and construction of the Additional Improvements prepared by the Architect and other design professionals and Approved by the Administrative Agent.

Pledge and Security Agreement means that certain Pledge and Security Agreement, dated as of the date hereof, by the Borrower in favor of the Administrative Agent.

Preliminary Project Report means the report prepared by the Construction Consultant of its review of the Plans and Specifications, the Construction Schedule, the General Contractor's Agreement and the Major Contracts.

Pre-Sale Requirement means evidence submitted by the Borrower (a) prior to the Initial Advance that it has obtained Qualified Reservations with Purchasers in connection with the sale of Fractional Ownership Units that, if converted into Bona Fide Sales Contracts, will provide aggregate Net Sales Proceeds totaling no less than \$13,000,000 and (b) prior to the initial Construction Advance that it has entered into Bona Fide Sales Contracts that will provide aggregate Net Sale Proceeds totaling not less than \$13,000,000.

Project means, collectively, the acquisition of the Land and Existing Improvements, the renovation of the Existing Improvements and the development and

construction of the Additional Improvements substantially in accordance with the Plans and Specifications.

Project Budget means the budget for the acquisition, development and construction of each component of the Project, as amended from time to time pursuant to Section 6.2(J), and which reflects all estimated Project Costs, certified by the Borrower and Approved by the Administrative Agent. A copy of the preliminary Project Budget is attached as Exhibit M.

Project Costs means all costs and expenses incurred by the Borrower to complete the Project.

Property means the Land, Improvements and Personal Property.

Property Disclosure Report means the Developer/Owner Property Report to be filed by the Borrower with the Utah Division of Real Estate pursuant to the Timeshare Act.

Proposed Default Response has the meaning given to such term in Section 8.8.

Protective Advance means any advance by the Administrative Agent or any Lender with respect to (a) the payment of any delinquent Taxes or insurance premiums owed by the Borrower with respect to the Property, (b) the removal of any Lien or encumbrance on the Property or the defense of the Borrower's title thereto or of the validity, enforceability, perfection or priority of the liens and security interests granted pursuant to the Loan Documents, (c) the payment of the cost of completing the Project or (d) preservation of the value of the Property, including, without limitation, for payment of heating, gas, electric and other utility bills.

Punchlist Items means details of construction, decoration and mechanical and electrical adjustment which, in the aggregate, are minor in character and are not necessary for the issuance of a TCO for the Property.

Purchase Agreement means any purchase and sale agreement with respect to any interest in a Fractional Ownership Unit.

Purchaser means any purchaser under a Purchase Agreement.

Qualified Reservation means a written reservation by a Purchaser (that is not an Affiliate of the Borrower or Hotel Operator) to purchase a Fractional Ownership Unit or fractional interest therein for a purchase price equal to or greater than the Minimum Purchase Price for such Fractional Ownership Unit, which reservation is accompanied by a deposit of not less than \$10,000.

Ratable Share or Ratably means, with respect to any Lender, its share of Advances of the Loan based on the proportion of the outstanding principal of the Loan advanced by such Lender to the total outstanding principal of the Loan.

Rate Request means the Borrower's irrevocable written notice by facsimile given by the Borrower to the Transaction Management department of the Administrative Agent, Attention Andrea Bailey, at (212) 597-1158 (or such other parties as the Administrative Agent may from time to time designate in writing) at the Administrative Agent's New York, New York office not later than 11:00 A.M. (New York City time) three Business Days prior to the commencement of the applicable Interest Period, of its intention to have all or any portion of the principal amount of the Loan bear interest as either a Base Rate Loan or a LIBOR Loan.

Rating Agencies means each of S&P, Moody's and Fitch.

Recourse Liability Agreement means that certain Recourse Liability Agreement, dated as of the date hereof, by the Sponsor in favor of the Administrative Agent and the Lenders, in the form of Exhibit N.

Register has the meaning given to such term in Section 11.5(f).

Rents has the meaning given to such term in Section 4.2(c).

Rents and Profits has the meaning specified in the Security Instrument.

Reporting Period means with respect to any date of determination the twelve (12) month period ending on such date.

Requested Advance Date has the meaning given to such term in Section 2.2(e).

Required Release Payment means with respect to each Fractional Ownership Unit or fractional interest therein sold in accordance with the terms of this Agreement, an amount equal to 80% of the greater of (a) the Net Sales Proceeds for such Fractional Ownership Unit and (b) 89% of the gross sales price for such Fractional Ownership Unit or fractional interest therein.

Requisite Lenders means, at any time, Lenders owed more than sixty-six and two-thirds percent (66 2/3 %) of the then aggregate unpaid principal amount of the Loan.

Required Insurance has the meaning given to such term in Section 6.1(j).

Reservation means a written reservation agreement between the Borrower and a prospective Purchaser entitling such Purchaser to enter into a Purchase Agreement to acquire a Fractional Ownership Unit or fractional interest therein.

Reserve Account has the meaning given to such term in Section 4.1(b).

Restoration means the repair and restoration of the Property as nearly as reasonably possible to the condition that the Property was in immediately prior to such casualty, Partial Condemnation or Total Condemnation (as applicable) together with such alterations as may be Approved by the Administrative Agent.

Retainage has the meaning given to such term in Section 2.2(m).

Sales Proceeds Account has the meaning given to such term in Section 4.1(a).

Security Instrument means the Construction and Interim Loan Deed of Trust and Leasehold Deed of Trust With Security Agreement, Assignment of Leases and Rents and Fixture Filing from the Borrower to Equity Title Insurance Agency, Inc., as trustee, for the benefit of the Administrative Agent, dated of even date herewith, encumbering the Trust Property, together with all spreaders, splitters, consolidations, extensions, restatements, replacements, modifications and supplements thereof.

Shortfall has the meaning given to such term in Section 2.2(d).

Single Employer Plan means a single employer plan, as defined in Section 4001(a)(15) of ERISA, that (a) is maintained for employees of any Loan Party or any ERISA Affiliate and no Person other than the Loan Parties and the ERISA Affiliates or (b) was so maintained and in respect of which any Loan Party or any ERISA Affiliate could have liability under Section 4069 of ERISA in the event such plan has been or were to be terminated.

Solvent and Solvency, with respect to any Person on a particular date, has the meaning ascribed to such term (or any similar term, including "Insolvency") in the Bankruptcy Code and any applicable state fraudulent conveyance laws, to include, without limitation, the following, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature and (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

Sponsor Documents means the Environmental Indemnity and the Recourse Liability Agreement.

Sponsor means CloudNine Resorts, LLC.

S&P means Standard & Poor's Ratings Services, a division of the McGraw Hill Companies, Inc., and its successors.

Stored Materials has the meaning given to such term in Section 2.2(l).

Subdivision Plat means the subdivision plat with respect to the Property required by applicable Law to be recorded in the official records of Summit County, Utah in connection with the Project.

Substantial Completion means, as applied to the Project, the date when (a) except for Punchlist Items, all work required by the Plans and Specifications and the other Loan Documents has been completed (including, without limitation, all installation of all FF&E), as certified by the Architect and approved by the Construction Consultant, (b) all Permits required for the normal use and occupancy of the Property (including delivery of a valid TCO for all Improvements (together with (i) a written determination of the Borrower setting forth the date by which the Borrower expects that a permanent Certificate of Occupancy should be issued for the Improvements (the *CO Date*), which CO Date shall be reasonably acceptable to the Administrative Agent and (ii) a written statement of the Construction Consultant substantially supporting the Borrower's determination of the CO Date)) substantially as set forth in the Plans and Specifications and otherwise necessary for the Property to function as a luxury hotel with related services (including, without limitation, an event center, restaurants and a spa), have been issued by the appropriate Governmental Authority and are in full force and effect and (c) all required utilities are supplied to the Property and are fully operating, as certified by the Architect and approved by the Construction Consultant.

Tax and Insurance Account has the meaning given to such term in Section 4.1(b)(i).

Tax and Insurance Deposit has the meaning given to such term in Section 4.3(i).

Taxes has the meaning given to such term in Section 2.13.

Tenants has the meaning given to such term in Section 4.2(c).

Test Period means, as of any applicable date of determination, the twelve (12) month period ending on the last day of the calendar month immediately prior to such date.

TCO means a temporary certificate of occupancy for the Improvements allowing for the operation of the Hotel for its intended purposes and issued by the proper Governmental Authority(ies).

Timeshare Act means the Timeshare and Camp Resort Act, Utah Code Annotated, Chapter 57, Title 19.

Title Company means Equity Title Insurance Agency, Inc. or any other title insurance company Approved by the Administrative Agent.

Title Insurance Policy has the meaning given to such term in Section 3.1(k).

Total Condemnation means any condemnation or eminent domain proceeding or action (including but not limited to any transfer made in lieu of or in anticipation of the exercise of such taking) by any Governmental Authority, whether for any permanent or temporary use, occupancy or other interest affecting such portion of the Property as, when so taken or condemned, would leave, in the Administrative Agent's sole determination, a balance of the Property that, due either to the area so taken or the location of the part so taken in relation to the part not taken, would not, under economic conditions, physical constraints, zoning laws, building

regulations and other Laws then existing, readily accommodate a new or reconstructed building or buildings and other improvements of a type comparable in all material respects to the Improvements existing as of the date of such taking or condemnation.

Total Project Costs means the aggregate amount of Project Costs set forth on the Project Budget.

Trade Contractor means each contractor, subcontractor, laborer, supplier, vendor, mechanic and materialman, providing labor, materials or services in connection with the construction of the Additional Improvements.

Treasury Rate means as of any applicable date of determination, the annualized yield on securities issued by the United States Treasury having a maturity closest to, but not earlier than, a date ten (10) years from the date of the applicable date of determination, as quoted in Federal Reserve Statistical Release [H. 15 (519)] under the heading "U.S. Government Securities - Treasury Constant Maturities" for the date most nearly two (2) weeks before the date of determination (or a comparable rate if the rate is no longer published).

Trust Property has the meaning given to such term in the Security Instrument.

UCC means the Uniform Commercial Code as adopted by the State of Utah.

Unused Fee means from and after the date hereof and until the Loan Amount has been advanced in full, a non-refundable fee, in the amount of THREE-EIGHTHS OF ONE PERCENT (375%) per annum of the then-unfunded portion of the Loan, which amount shall accrue on the daily average unfunded portion of the Loan for the applicable period and shall be payable monthly in arrears on each Payment Date.

USAL means the Ninth Revised Edition (1996) of the Uniform System of Accounts for the Lodging Industry jointly published by the Hotel Association of New York City and The Educational Institute of the American Hotel and Motel Association.

U.S. Obligations means direct full faith and credit obligations of the United States of America that are not subject to prepayment, call or early redemption.

Withdrawal Liability has the meaning specified in Part I of Subtitle E of Title IV of ERISA.

Section 1.2 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". The word "or" shall be construed to be inclusive. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments,

supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) any reference to any statute or law shall be construed as referring to such statute or law as amended, modified or supplemented from time to time and all rules and regulations promulgated thereunder and (f) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

Section 1.3 Approval. All references in any of the Loan Documents to Lenders' approval or the Administrative Agent's approval, or similar words requiring any such approval of a Lender or the Administrative Agent, shall be construed to include approval by such Lenders' or the Administrative Agent's (as the case may be) legal counsel and other consultants.

ARTICLE 2

AGREEMENT TO LEND AND

PAYMENT OF LOAN

Section 2.1 Making of the Loan. (a) Upon the terms and subject to the conditions set forth in this Agreement, each Lender severally and not jointly agrees to make such Lender's Ratable Share of Advances of the Loan to the Borrower from time to time, in accordance with the provisions hereof, during the Construction Loan Term, in an aggregate principal amount of up to the Loan Amount. Upon the Administrative Agent's receipt of such funds and upon fulfillment of the applicable conditions in Article 3, the Administrative Agent will make such funds available to the Borrower by wire transfer of immediately available funds to an account of the Borrower designated in writing by the Borrower to the Administrative Agent and otherwise in accordance with the terms hereof. Amounts borrowed under this Section 2.1(a) and repaid or prepaid may not be re-borrowed.

(b) The obligations of the Lenders hereunder are several and not joint. Failure of any Lender to fulfill its obligations hereunder shall not result in any other Lender becoming obligated to advance more than its Ratable Share nor shall such failure release or diminish the obligations of any Lender to fund its Ratable Share.

(c) The Loan shall be secured by (i) the Trust Property pursuant to the Security Instrument and (ii) the other security interests and Liens granted in the Collateral pursuant to this Agreement and in the other Loan Documents.

(d) The proceeds of the Loan shall be used only to pay (or reimburse the Borrower for) a portion of (i) Total Project Costs and (ii) transaction costs related to the making of the Loan.

Section 2.2 Advances: Method of Disbursement of Loan Proceeds. (a)

Advances. The Project Budget shall separately reflect, by category and line items, the purposes and the amounts for which funds to be advanced by the Lenders under this Agreement are to be used. The Lenders shall not be required to disburse for any category or line item of Project Costs any amount in excess of the amount specified therefor in the Project Budget, subject to Sections 2.2(d), 2.2(k) and 6.2(j) (or other reallocations approved by the Administrative Agent in its sole discretion). Any such fees or payments to be made pursuant to any agreement (certified true, accurate and complete copies of such agreements shall promptly be delivered to the Administrative Agent upon execution) shall only be disbursed hereunder at such times provided under and otherwise in accordance with said agreement. No Lender shall be obligated to fund, either in the aggregate or in respect of any Advance, amounts in excess of its Ratable Share of the Loan Amount as set forth on Exhibit BB, but if the Loan Amount is increased or the Administrative Agent makes funds available in excess of the Loan Amount, each Lender shall have the right to elect at its own discretion whether to provide funds to the Administrative Agent to fund amounts in excess of the Loan Amount. Notwithstanding the foregoing and anything herein to the contrary, each Lender shall be obligated to fund its Ratable Share of any and all Protective Advances in the event such Protective Advances are deemed necessary by the Administrative Agent (in its sole and absolute discretion) to preserve the Lien of the Security Instrument, the Collateral or any of the Administrative Agent's or the Lenders' rights under any of the Loan Documents. If and to the extent any Lender shall fund amounts in excess of the Loan Amount for any purpose, such Lender's Ratable Share of the Loan shall be adjusted from time to time based on the total amounts advanced by all of Lenders from time to time in respect of the Loan.

(b) **Draw Request.** At such time as the Borrower shall desire to obtain an Advance, the Borrower shall complete, execute and deliver to the Administrative Agent a requisition in the form of Exhibit O (*Borrower's Requisition*), such Borrower's Requisition constituting an integral part of each Draw Request. Each Draw Request shall constitute the Borrower's representation and warranty to the Lenders that: (A) any completed construction is substantially in accordance with the Plans and Specifications; (B) all Project Costs for the payment of which the Lenders have previously advanced funds have in fact been paid; (C) all the representations and warranties of each Loan Party contained in the Loan Documents, including those set forth in Article 5, were true, correct and complete in all material respects as of the date of execution of this Agreement, as of the date of any previous Advance and continue to be true and correct in all material respects as of the date of such Draw Request; (D) no Default or Event of Default shall have occurred and be continuing hereunder; and (E) the Borrower continues to be in compliance in all material respects with all of the other terms, covenants and conditions contained in this Agreement and the other Loan Documents. Each Draw Request shall be (i) in accordance with the terms of this Agreement and (ii) accompanied by:

(i) if the Draw Request includes amounts to be paid to the General Contractor under the General Contractor's Agreement, a completed and itemized Application and Certificate for Payment (AIA Document No. G702) or similar form Approved by the Administrative Agent, containing the certification of the General Contractor and the Architect as to the accuracy of same, together with invoices relating to all items of Project Costs covered thereby and accompanied